

AMENDED IN ASSEMBLY APRIL 14, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2752**

**Introduced by Assembly Member Chu**

February 20, 2004

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An act to add ~~Sections 301.2 and 301.3~~ *Section 301.2* to the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2752, as amended, Chu. Corporations: elections.

Existing law, the General Corporation Law, *generally* provides for the ~~regulation of corporations by the Department of Corporations~~ *election of a corporation's directors at its annual shareholders' meeting.*

This bill would require a corporation that is a publicly traded company, as defined, to have in place corporate election procedures ~~meeting specified requirements, which it would be required to file with the Secretary of State for shareholders to nominate candidates for election as directors. The bill would require a company's proxy cards to include specified information, and would require a company to make information regarding its nomination and elections process available upon request of a shareholder and on its Web site. The bill would require the Secretary of State, not later than December 31, 2005, to provide access to the corporate election procedures by means of an online database.~~

~~This bill would require a corporation doing business in California that provides for shareholders to submit and vote on proposals on an annual ballot to implement proposals that pass by a majority vote,~~

~~unless the ballot clearly states that the proposals are advisory, within the later of 180 days from the vote or a date specified in the proposal. The bill would authorize the Secretary of State, the Attorney General, or any individual or entity eligible to vote in the election to seek a court order to compel the corporation to implement the proposal or be in contempt of court and subject to a fine of up to \$100,000 per day until the proposal is implemented. The bill would require 50% of the fine to be paid to the General Fund and 50% to the California Victims of Fraud Restitution Fund. The bill would require these corporations to file a copy of these procedures with the Secretary of State, to post them on the corporation's Internet Web site, and to make them available to a shareholder upon his or her request.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited as, the  
2 Corporate Elections Fairness Act of 2004.

3 SEC. 2. Section 301.2 is added to the Corporations Code, to  
4 read:

5 301.2. (a) If a corporation is publicly traded company, it shall  
6 have in place a process for its shareholders to nominate a candidate  
7 or candidates for election as directors. This process shall be known  
8 as its corporate election procedures.

9 (b) For purposes of this section, “publicly traded company” or  
10 “company” means an issuer, as defined in paragraph (8) of  
11 subsection (a) of Section 78c of Title 15 of the United States Code,  
12 that meets either of the following requirements:

13 (1) Its securities are registered under Section 78l of Title 15 of  
14 the United States Code.

15 (2) It is required to file reports under subsection (d) of Section  
16 78o of Title 15 of the United States Code.

17 (c) A domestic corporation or foreign corporation, other than  
18 a foreign association, qualified to transact intrastate business shall  
19 file a copy of its corporate election procedures with the Secretary  
20 of State within 120 days after the end of its 2004-05 fiscal year or  
21 within 120 days of the effective date of this section, whichever is  
22 later, and again whenever the corporate election procedures are  
23 changed or amended.

~~(d) The election procedures of a company shall include, but shall not be limited to, provisions addressing all of the following subjects:~~

~~(1) Shareholder eligibility. The procedures may include a minimum eligibility for a shareholder or group of shareholders to make a nomination, which shall not be lower than the number of shareholders who beneficially own, either individually or in the aggregate, more than 2 percent of the company's voting securities with each security having been held for at least two years as of the date of the nomination.~~

~~(2) Soliciting support. The procedures shall include a requirement that the company make information available to shareholders no less than once per year regarding all individuals or groups interested in soliciting support to nominate candidates for the board, in order to enable individuals to join their groups.~~

~~(3) Deadlines and candidate information. The company may set a reasonable deadline and limit on the amount of information provided for each group to solicit support, but in no event shall the amount of information permitted be less than one complete 8 1/2 x 11 inch page. In addition, prior to an election, proxy statements shall be required to include a statement provided by the candidate of the same length as is allowed to any other director candidate, but in no event shall it be less than 250 words in length.~~

~~(4) Candidate limits. The company may set a limit on the number of candidates who can be elected by shareholders, but the limit may not be less than 40 percent of the total number of directors on the board.~~

~~(5) Nomination process. The procedures shall include a requirement that, in order to have a nominee included in a company's proxy statement and proxy card, the nominating shareholder or nominating group must provide notice to the company, no later than 80 days before the date that the company mails its proxy material for the annual meeting, of its intent to require that the company include the nominee. The procedures shall require this notice to include all of the following:~~

~~(A) A statement from the nominee for inclusion in the company's proxy statement that the nominee consents to being named in the proxy statement and to serve on the board if elected.~~

~~(B) A statement that the nominee has complied with the proxy statement disclosure requirements applicable to directors.~~

~~(C) The following information with regard to the nominating shareholder or members of a nominating group:~~

~~(i) Name and business address.~~

~~(ii) Present principal occupation or employment and the name, principal business, and address of any corporation or other organization in which the employment is carried on.~~

~~(iii) The amount of each class of securities of the company that the individual owns beneficially, directly, or indirectly.~~

~~(iv) Whether or not during the past 10 years the individual has been convicted in a criminal proceeding, excluding traffic violations or similar misdemeanors, and, if so, the details with respect to each conviction.~~

~~(6) Allowable restrictions. The procedures may include restrictions to ensure director independence and high ethical standards by restricting nominees who are not independent and those who have been convicted in a criminal proceeding in the past 10 years.~~

~~(e) If the corporate election procedures do not contain all of the requirements in subdivision (d), or are not submitted to the Secretary of State within 120 days after the end of the corporation's 2004-05 fiscal year or within 120 days of the effective date of this section, whichever is later, and again whenever the procedures are changed or amended, it shall constitute a failure to file a statement pursuant to Section 2117 or 1502.~~

~~(f) (1) A company's proxy card shall identify any shareholder nominees, and shall present the nominees in an impartial manner. A company is permitted to recommend on the proxy card that the shareholder vote against, or withhold votes from, shareholder nominees and in favor of the management nominees. A company may not provide security holders with the option of voting for, or withholding authority to vote for, the company nominees as a group. A company shall require that each candidate be voted on separately, and shall list on the proxy card the name of each candidate.~~

~~(g) If a company includes statements in its proxy statement supporting company nominees or opposing the nominating shareholder's nominee or nominees, or both, other than a mere recommendation to vote in favor of, or withhold votes from, specified candidates, the nominating shareholder or nominating~~

group shall be given the opportunity to include in the company's proxy statement a statement of support for the shareholder nominee or nominees, of a length not to exceed 500 words per nominee. A company shall not be liable for false or misleading statements included in the notice or in disclosures provided to the company by the nominating shareholder or nominating group.

(h) A shall make information regarding the process and deadlines to nominate and elect an individual to the board available upon request of any shareholder, and shall include that information on its Web site in each location that the company's annual report is found.

(i) The information required in subdivision (h) shall be available and open to the public for inspection. The Secretary of State shall, not later than December 31, 2005, provide access to the corporate election procedures by means of an online database.

SEC. 3. Section 301.3 is added to the Corporations Code, to read:

301.3. (a) A corporation doing business in California that provides for shareholders to submit and vote on proposals on an annual ballot shall implement any proposal that passes by a majority vote. A corporation is not required to implement a proposal if the ballot clearly states that the proposal is advisory. However, if a corporation establishes a means to place an advisory shareholder proposal on the ballot, it shall also establish a means to place shareholder proposals on the ballot that are required be implemented.

(b) If a corporation does not implement a shareholder proposal that received a majority vote and that was not clearly marked as advisory, either within 180 days from the date of the shareholder vote or by a date specified in the proposal, whichever is later, the corporation shall be in violation of this section. The Secretary of State, the Attorney General, or any individual or entity that owned shares and was eligible to vote in the election in which the proposal was voted on, may seek a court order to compel the corporation to implement the proposal.

(c) If the corporation does not comply with a court order issued pursuant to subdivision (b), the corporation shall be in contempt of court and may be fined up to one hundred thousand dollars (\$100,000) per day for every day that the proposal is not implemented. The fine shall be paid 50 percent into the General

1 ~~Fund and 50 percent into the California Victims of Fraud~~  
2 ~~Restitution Fund provided in Section 1502.5.~~

3 *(d) A corporation described in subdivision (c) shall make*  
4 *available a copy of its corporate election procedures to a*  
5 *shareholder, upon the shareholder's request, and shall post its*  
6 *corporate election procedures on the corporation's Internet Web*  
7 *site.*

